

Table of Contents

Alaska Statutes Title 44 - State Government Selected Provisions

TITLE 44 - STATE GOVERNMENT	1
Chapter 33 - Department of Community & Economic Development Local Boundary Commission	1
Sec. 44.33.810. LOCAL BOUNDARY COMMISSION.....	1
Sec. 44.33.812. POWERS AND DUTIES.	1
Sec. 44.33.814. MEETINGS AND HEARINGS.	5
Sec. 44.33.816. MINUTES AND RECORDS.	5
Sec. 44.33.818. NOTICE OF PUBLIC HEARINGS.	6
Sec. 44.33.820. QUORUM.	6
Sec. 44.33.822. BOUNDARY CHANGE.....	6
Sec. 44.33.824. EXPENSES.	6
Sec. 44.33.826. HEARINGS ON BOUNDARY CHANGES.....	7
Sec. 44.33.828. WHEN BOUNDARY CHANGE TAKES EFFECT.....	7
Borough Feasibility Studies	8
Sec. 44.33.840. BOROUGH FEASIBILITY STUDIES.....	8
Sec. 44.33.842. REQUESTS FOR STUDIES.....	8
Sec. 44.33.844. BOUNDARIES.....	8
Sec. 44.33.846. CONTRACTS.....	9
Chapter 62 - Administrative Procedure Act Open Meetings of Governmental Bodies	9
Sec. 44.62.310. GOVERNMENT MEETINGS PUBLIC.....	9
Sec. 44.62.312. STATE POLICY REGARDING MEETINGS.....	15

TITLE 44 - STATE GOVERNMENT

Chapter 33 - Department of Community & Economic Development Local Boundary Commission

Section

810.	Local boundary commission	820.	Quorum
812.	Powers and duties	822.	Boundary change
814.	Meetings and hearings	824.	Expenses
816.	Minutes and records	826.	Hearings on boundary changes
818.	Notice of public hearings	828.	When boundary change takes effect

Sec. 44.33.810. LOCAL BOUNDARY COMMISSION.

There is in the Department of Community and Economic Development a Local Boundary Commission. The Local Boundary Commission consists of five members appointed by the governor for overlapping five-year terms. One member shall be appointed from each of the four judicial districts described in AS 22.10.010 and one member shall be appointed from the state at large. The member appointed from the state at large is the chair of the commission. (§ 7 ch 64 SLA 1959; am § 5 ch 200 SLA 1972; am § 100 ch 59 SLA 1982; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.565. Renumbered in 1999. Formerly AS 44.19.250. Renumbered in 1980.

Annotator's notes. - Some of the cases cited in the notes below were decided under former AS 44.19 or former AS 44.47.

Cross References - For further provisions relating to the appointment, qualifications, and terms of members of the commission, see AS 39.05.060.

Decisions -When constitutional provision effective. - The method for making boundary changes, contemplated by Alaska Const., art. X, Sec. 12, was operative upon the enactment of AS 44.19.260 now AS 44.47.567 and this section. Fairview Pub. Util. Dist. No. 1 v. Anchorage, 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Cited in Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974).

Sec. 44.33.812. POWERS AND DUTIES.

- (a) The Local Boundary Commission shall
- (1) make studies of local government boundary problems;
 - (2) adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution;
 - (3) consider a local government boundary change requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state; and

(4) develop standards and procedures for the extension of services and ordinances of incorporated cities into contiguous areas for limited purposes upon majority approval of the voters of the contiguous area to be annexed and prepare transition schedules and prorated tax mill levies as well as standards for participation by voters of these contiguous areas in the affairs of the incorporated cities furnishing services.

(b) The Local Boundary Commission may

(1) conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services; and

(2) present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years. (§ 7 ch 64 SLA 1959; § 2 ch 45 SLA 1960; am § 1, 2 ch 55 SLA 1964; am § 1, 2 ch 161 SLA 1966; am § 6 ch 200 SLA 1972; am § 30 ch 58 SLA 1994)

Revisors Notes - Formerly AS 44.47.567. Renumbered in 1999. Formerly AS 44.19.260. Renumbered in 1980.

Cross References -For further provisions relating to powers and duties of the commission, see AS 29.06 and Alaska Const., art. X, Sec. 12.

Amendment Notes -The 1994 amendment, effective August 22, 1994, in paragraph (a)(2), substituted "adopt regulations providing" for "develop proposed" and "municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution" for "changing local boundary lines."

AG Opinions - When grouped together, the powers and duties of the local boundary commission are as follows: (1) To consider any local government boundary change (Sec. 12, art. X, Alaska Constitution); (2) to present proposed changes to the legislature (Alaska Const., art. X, Sec. 12; Sec. 7, ch. 64, SLA 1959); (3) (subject to law) to establish procedures whereby boundaries may be adjusted by local action (Alaska Const., art. X, Sec. 12); (4) to make studies of local government boundary problems (Sec. 7, ch. 64, SLA 1959); (5) to develop proposed standards and procedures for changing local boundary lines (Sec. 7, ch. 64, SLA 1959); (6) to hold hearings on proposed boundary changes (Sec. 7, ch. 64, SLA 1959). 1959 Op. Att'y Gen., No. 30.

The local boundary commission has the power and authority to recommend borough boundaries to the legislature. 1959 Op. Att'y Gen., No. 30.

The commission has the authority to amend a petition for the annexation of an area to a municipality by changing the boundaries of the area proposed for annexation. This authority must, of course, be exercised in accordance with the applicable annexation regulations. October 25, 1982, Op. Att'y Gen.

Annotator's notes – Some cases cited in the notes below were decided under form AS 44.19 or former AS 44.47.

Decisions - Duties of commission. - By this section and AS 44.47.583 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. United

States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

When constitutional provision effective. - The method for making boundary changes, contemplated by Alaska Const., art. X, Sec. 12, was operative upon the enactment of AS 44.19.260 now AS 44.47.567 and this section. Fairview Pub. Util. Dist. No. 1 v. Anchorage, 368 P.2d 540 (Alaska), appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962).

Methods for changing boundaries. - Alaska Const., art. X, Sec. 12 established two methods by which local boundaries might be changed: (1) by direct action of the local boundary commission subject to legislative disapproval, and (2) by establishment by the commission of procedures for the adjustment of boundaries by local action. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Step annexation allows for gradual assimilation. - As an alternative to immediate annexation, the step-annexation provision allows for gradual assimilation of contiguous areas into incorporated cities where direct annexation would be premature or impractical. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

How step annexation commenced. - Ordinarily, a step annexation will be commenced by a municipality's petition specifically requesting that alternative, although presumably the commission could require the municipality to annex by the step method. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Section implements Alaska Const., art. X, Sec. 12. - The legislature implemented Alaska Const., art. X, Sec. 12 by enacting this section. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

The intention of Alaska Const., art. X, Sec. 12 and this section - was to provide an objective administrative body to make state-level decisions regarding local boundary changes, thus avoiding the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974).

Mandatory or discretionary nature of duties. - The duties imposed upon the commission in subsection (a) are mandatory. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

The duties imposed in subsection (b) are discretionary. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

The development of standards is a precondition - to the commission's exercise of its discretion under subsection (b) of this section. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

The exercise of the commission's discretion under subsection (b) of this section is conditioned upon the development of standards and procedures for changing local boundary lines under subsection (a)(2) of this section. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971).

Under subsection (a) of this section the legislature requires the commission to develop standards in order to recommend boundary changes. United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

Since mandatory terms were used, the legislature clearly intended the local boundary commission to adopt regulations concerning modification of local boundary lines. Mukluk Freight Lines v. Nabors Alaska Drilling, Inc., 516 P.2d 408 (Alaska 1973) (decided prior to the 1994 amendment).

There are three purposes - underlying the statutory requirement of annexation standards.

First, such standards expose the basic decision-making processes of the commission to public view. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Second, the standards guide local governments in making annexation decisions and in preparing proposals for the commission. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Continued failure to have promulgated standards - made an annexation a fortiori voidable and prima facie illegal. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Failure must result in injustice. - Failure to promulgate standards for annexations was not an error so substantial as to result in injustice. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Reasonable time limitation on duty. - The duty under subsection (a)(3) to consider requested boundary changes implies a reasonable time limitation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Veto power of legislature. - Alaska Const., art X, Sec. 12, empowers the legislature to veto commission actions. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Review by legislature. - Alaska Const., art. X, Sec. 12 does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Alaska Const., art. X, Sec. 12, and AS 44.47.583 do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Legislature handicapped in absence of known standards. - Under Alaska's constitution, the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Existing cities with local boundary commission created boundaries - remain unaffected by the holding, under the de facto municipality doctrine, in *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971) (decided prior to the 1994 amendment).

Doctrine of de facto municipal incorporation applied to annexations. - See *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The doctrine of de facto municipal incorporation insulates from collateral attack annexations not impeccably effected where the annexation is attempted under a proper statute, a good faith effort is made to comply with the statute, the statute is colorably complied with, and the municipality has exercised its powers in good faith within the annexed territory. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

All annexations will have the purpose and effect, - in part, of extending city services. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Differently served and treated areas after annexation. - The post-annexation creation of differently served and treated areas does not impugn the reasonableness of the annexation. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Common challenge is to attack procedures. - The more common challenge to local boundary commission action attacks the procedures by which the substantive decisions were made. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

The selection of annexation method made by the commission - and approved by the legislature is controlling. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Judicial review. - There are questions of public policy to be determined in annexation proceedings which are beyond the province of the court. Examples are the desirability of annexation, as expressed in published standards. Judicial techniques are not well adapted to resolving these questions. In that sense, these may be described as "political questions," beyond the compass of judicial review. But other annexation issues, such as whether statutory notice requirements were followed, are readily decided by traditional judicial techniques. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

The policy decision as to the mode of annexation is an exercise of lawfully vested administrative discretion which the supreme court will review only to determine if administrative, legislative or constitutional mandates were disobeyed or if the action constituted an abuse of discretion. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Annexations effected through local boundary commission procedures receive a full administrative hearing, followed by legislative review, before they are subjected to judicial scrutiny. *Port Valdez Co. v. City of Valdez*, 522 P.2d 1147 (Alaska 1974).

Wood River made part of city of Dillingham. - When the legislature failed to disapprove of the commission's proposal, the commission's local boundary change, which consisted of the abolition of the boundary of Wood River and the confirmation of the boundary of the city of Dillingham, had the effect of making Wood River a part of the city of Dillingham. When the boundary commission's proposal for boundary change became effective, the city of Wood River was dissolved, even though the statutory procedures for dissolution of cities were not followed. *Oesau v. City of Dillingham*, 439 P.2d 180 (Alaska 1968) (decided prior to the 1994 amendment).

Quoted in *Lake & Peninsula Borough v. Local Boundary Comm'n*, 885 P.2d 1059 (Alaska 1994).

Sec. 44.33.814. MEETINGS AND HEARINGS.

The chair of the commission or the commissioner of community and economic development with the consent of the chair may call a meeting or hearing of the Local Boundary Commission. All meetings and hearings shall be public. (Sec. 3 ch 45 SLA 1960; am Sec. 7 ch 200 SLA 1972; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.569. Renumbered in 1999. Formerly AS 44.19.270. Renumbered in 1980.

Sec. 44.33.816. MINUTES AND RECORDS.

The Local Boundary Commission shall keep minutes of all meetings and hearings. If the proceedings are transcribed, minutes shall be made from the transcription. The minutes are a

public record. All votes taken by the commission shall be entered in the minutes. (§ 3 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.571. Renumbered in 1999. Formerly AS 44.19.280. Renumbered in 1980.

Sec. 44.33.818. NOTICE OF PUBLIC HEARINGS.

Public notice of a hearing of the Local Boundary Commission shall be given in the area in which the hearing is to be held at least 15 days before the date of the hearing. The notice of the hearing must include the time, date, place, and subject of the hearing. The commissioner of community and economic development shall give notice of the hearing at least three times in the press, through other news media, or by posting in a public place, whichever is most feasible. (§ 3 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.573. Renumbered in 1999. Formerly AS 44.19.290. Renumbered in 1980. In 1989 "commissioner" was substituted for "director of local affairs" to reflect the changes made by ch. 200, SLA 1972.

Sec. 44.33.820. QUORUM.

Three members of the commission constitute a quorum for the conduct of business at a meeting. Two members constitute a quorum for the conduct of business at a hearing. (§ 3 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.575. Renumbered in 1999. Formerly AS 44.19.300. Renumbered in 1980.

Sec. 44.33.822. BOUNDARY CHANGE.

A majority of the membership of the Local Boundary Commission must vote in favor of a proposed boundary change before it may be presented to the legislature. (§ 3 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.577. Renumbered in 1999. Formerly AS 44.19.310. Renumbered in 1980.

Sec. 44.33.824. EXPENSES.

Members of the Local Boundary Commission receive no pay but are entitled to the travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180 . (§ 4 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.579. Renumbered in 1999. Formerly AS 44.19.320. Renumbered in 1980.

Cross References - For per diem and travel expenses, see AS 39.20.180.

Sec. 44.33.826. HEARINGS ON BOUNDARY CHANGES.

A local government boundary change may not be proposed to the legislature unless a hearing on the change has been held in or in the near vicinity of the area affected by the change. (§ 2 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.581. Renumbered in 1999. Formerly AS 44.19.330. Renumbered in 1980.

Sec. 44.33.828. WHEN BOUNDARY CHANGE TAKES EFFECT.

When a local government boundary change is proposed to the legislature during the first 10 days of any regular session, the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. (§ 2 ch 45 SLA 1960; am § 64 ch 58 SLA 1999)

Revisors Notes - Formerly AS 44.47.583. Renumbered in 1999. Formerly AS 44.19.340. Renumbered in 1980.

Decisions

Change effective unless legislature disapproves. - By this section and AS 44.47.567 it is provided that the commission must make studies of local government boundary problems, develop proposed standards and procedures for changing boundaries, and consider boundary changes requested of it by political subdivisions. The commission may conduct hearings on boundary changes and present proposed changes to the legislature. The change becomes effective unless the legislature disapproves; legislative silence permits the change. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Veto power of legislature. - Alaska Const., art. X, Sec. 12, empowers the legislature to veto commission actions. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Compliance with legislative requirements. - Alaska Const., art. X, Sec. 12 does nothing to compel the legislature to review for compliance with its own requirements. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

This section and Alaska Const., art. X, Sec. 12, do not make the decision as to whether the commission has complied with the law exclusively legislative. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Legislature handicapped in absence of known standard governing change. - Under Alaska's Constitution the supreme court has the duty of insuring that administrative action complies with the laws of Alaska. Absent known standards governing the changing of local boundary lines, the legislature's ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the commission is seriously handicapped. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Existing cities with local boundary commission created boundaries - remain unaffected by the holding, under the de facto municipality doctrine, in *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Standing to contest annexation. - An aggrieved property owner in an area to be annexed has standing to contest the annexation. *United States Smelting, Ref. & Mining Co. v. Local Boundary Comm'n*, 489 P.2d 140 (Alaska 1971).

Stated in State, Dep't of Nat'l Resources v. City of Haines, 627 P.2d 1047 (Alaska 1981).

Borough Feasibility Studies

Section

840.	Borough feasibility studies	844.	Boundaries
842.	Requests for studies	846.	Contracts

Sec. 44.33.840. BOROUGH FEASIBILITY STUDIES.

The commissioner may contract for studies of the feasibility of establishing boroughs in the unorganized borough. A study may be conducted under this section only if

- (1) appropriations are available for that purpose; and
- (2) the study is requested by a person residing in the area to be studied or by a city located in the area to be studied. (§ 75 ch 74 SLA 1985;)

Revisors Notes - Formerly AS 44.47.700. Renumbered in 1999.

Sec. 44.33.842. REQUESTS FOR STUDIES.

A request for a study of the feasibility of establishing a borough in the unorganized borough shall be submitted to the commissioner in writing and must include

- (1) a description of the boundaries of the area of the proposed study; and
- (2) an indication of local interest in the proposed study consisting of either
 - (A) a petition requesting the study containing the signatures and addresses of five percent of the voters residing in the area of the proposed study based on the number of voters who voted in the area in the last statewide election; or
 - (B) resolutions requesting the study adopted by the governing bodies of at least five percent of the cities within the area of the proposed study. (Sec. 75 ch 74 SLA 1985)

Revisors Notes - Formerly AS 44.47.710. Renumbered in 1999.

Sec. 44.33.844. BOUNDARIES.

The boundaries of an area studied shall conform to the boundaries indicated in the request for the study under AS 44.47.710 unless the commissioner, after a public hearing held in the area of the proposed study, determines that the boundaries should be altered. In determining the boundaries of an area to be studied, the commissioner shall consider

- (1) the standards applicable to the incorporation of boroughs under AS 29.05.031;
- (2) boundaries of regional corporations established under 43 U.S.C. 1606;
- (3) census divisions of the state used for the 1980 census;
- (4) boundaries of the regional educational attendance areas established under AS 14.08.031; and
- (5) boundaries of coastal resource service areas organized under AS 46.40.110 - 46.40.210. (Sec. 75 ch 74 SLA 1985)

Revisors Notes - Formerly AS 44.47.720. Renumbered in 1999.

Sec. 44.33.846. CONTRACTS.

(a) The commissioner shall contract for a study of the feasibility of establishing a borough in the unorganized borough by following the procedures under AS 36.30 (State Procurement Code). The commissioner shall include terms in the contract that provide for

(1) public participation in the preparation of the study;
(2) completion of the study not later than June 30 of the third year after the year the contract is executed.

(b) A study under this section must include

(1) a recommendation for or against incorporation of a borough containing all or part of the area studied;

(2) an evaluation of the economic development potential of the area studied;

(3) an evaluation of capital facility needs of the area studied;

(4) an evaluation of demographic, social, and environmental factors affecting the area studied;

(5) an evaluation of the relationships among regional educational attendance areas, coastal resource service areas, and other regional entities responsible for providing services in the area studied;

(6) an evaluation of the relationships between the existing cities within the area studied and regional entities responsible for providing services in the area; and

(7) specific recommendations for

(A) organization of a home rule or general law borough government if one is recommended;

(B) changes in organization of cities in the area studied; or

(C) the improvement of the delivery of services to the public by the state in the area studied. (Sec. 75 ch 74 SLA 1985; am Sec. 47 ch 106 SLA 1986)

Revisors Notes - Formerly AS 44.47.730. Renumbered in 1999.

Chapter 62 - Administrative Procedure Act Open Meetings of Governmental Bodies

Section

310. Government meetings public

312. State policy regarding meetings

Sec. 44.62.310. GOVERNMENT MEETINGS PUBLIC.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive

session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential;

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; or

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to the publication required by AS 44.62.175(a) in the Alaska Administrative Journal, the notice may be given by using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an

action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

- (1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;
- (2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;
- (3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;
- (4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;
- (5) the amount of time that has passed since the action was taken;
- (6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;
- (7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;
- (8) the degree to which violations of this section were wilful, flagrant, or obvious;
- (9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government. (Sec. 1 art VI (ch 1) ch 143 SLA 1959; am Sec. 1 ch 48 SLA 1966; am Sec. 1 ch 78 SLA 1968; am Sec. 1 ch 7 SLA 1969; am Sec. 1, 2 ch 98 SLA 1972; am Sec. 2 ch 100

SLA 1972; am Sec. 1 ch 189 SLA 1976; am Sec. 2, 3 ch 54 SLA 1985; am Sec. 2 ch 201 SLA 1990; am Sec. 7 ch 74 SLA 1991; am Sec. 2 - 8 ch 69 SLA 1994)

Amendment Notes - The 1994 amendment, effective June 3, 1994, rewrote subsections (a)-(f) and added subsections (g) and (h).

AG Opinions - The mental health lands working group is not a public body covered by the Open Meetings Act, and its meetings are not covered by the Open Meetings Act. That working group was not a formally established entity with a specific charge to take specific action or give specific advice, and the activities of the group were not financed by public money. It consisted of individuals, including state department heads, meeting merely to begin settlement discussions to resolve the legal issues in a lawsuit. January 1, 1992, Op. Att'y Gen.

The notice requirements of the Open Meetings Act require that the Museum Collections Advisory Committee publish a schedule of its fixed monthly meetings twice yearly, stating the date, time, and place of the meetings. For unscheduled meetings, the public may be notified by public service announcements on the radio, as long as there is confidence that the announcements will in fact be made; but regardless of the media used, at least three days notice should be given. December 30, 1992, Op. Att'y Gen.

Decisions – Fairbanks Charter provision preempted. – The State Open Meetings Act preempts the Fairbanks City Charter provision concerning open meetings. *Walleri v. City of Fairbanks*, 964 P.2d 463 (Alaska 1998).

"Meeting". - A private meeting between a quorum of the Anchorage Municipal Assembly and a developer to discuss in detail the developer's application for rezoning violated this section; a "meeting" for purposes of the Open Meetings Act includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business. The rezoning ordinance later passed by the assembly that allowed a modified plan of development was therefore held void. *Brookwood Area Homeowners Ass'n v. Municipality of Anchorage*, 702 P.2d 1317 (Alaska 1985).

Findings. - There is nothing in the Administrative Procedure Act requiring a board to make any findings when exercising its quasi-legislative function, and therefore there is nothing in the act regulating the manner in which findings must be adopted or approved. *State v. Hebert*, 743 P.2d 392 (Alaska Ct. App. 1987).

The scope of subsection (a), etc. - of this section is not limited to decision-making bodies only. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983) (decided prior to 1994 amendment which added the exclusion under paragraph (d)(6)).

Neither the Department of Corrections nor the Department of Administration violated the Administrative Procedure Act, because the act does not apply to informal groups of state employees who have no power to take collective action by vote, as it would be impossible to apply the act to the everyday dealings of public employees when they meet with each other and those outside of state government in the day-to-day conduct of state's business. *Kila, Inc. v. State*, Sup. Ct. No. Op. 4105 (File No. S-5237), P.2d (1994).

No express exception to pro-disclosure requirements of Public Records Act. - The Open Meetings Act, which provides for closed executive sessions when subjects potentially prejudicial to reputation are discussed, does not establish an express exception to the pro-disclosure requirements of the Public Records Act or otherwise permit the suppression of documents produced at such sessions. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Meetings with attorney. - Because the attorney- client privilege operates concurrently with this section although it is not an expressed exception, the board's executive session, called to discuss the status of this case with its

attorney, did not violate this section. The privilege should not be applied blindly. It is not enough that the public body be involved in litigation. Rather, the rationale for the confidentiality of the specific communication at issue must be one which the confidentiality doctrine seeks to protect: candid discussion of the facts and litigation strategies. The privilege thus should be applied only when the revelation of the communication will injure the public interest or there is some other recognized purpose in keeping the communication confidential. *Cool Homes, Inc. v. Fairbanks N. Star Borough*, 860 P.2d 1248 (Alaska 1993).

Section applies to local university tenure committee. - The local tenure committee of the University of Alaska comes within the ambit of the public meetings statute. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983) (decided prior to 1994 amendment which added the exclusion under paragraph (d)(6)).

Paragraph (c)(2) of this section, which provides that closed executive sessions may be held to discuss "subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion," is applicable to tenure committee meetings. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983) (decided prior to 1994 amendment which added the exclusion under paragraph (d)(6)).

Tenure committee meetings are not "quasi-judicial" proceedings, and thus do not come within the exception to the public meeting requirements found in paragraph (d)(1) of this section. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983) (decided prior to 1994 amendment which added the exclusion under paragraph (d)(6)).

Organizational meetings of legislature. - Public meetings law generally applies to votes on the floor of either house of the legislature, but exempts organizational votes taken there, such as removal of the speaker, from its coverage. *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982).

Notice of reorganization of legislature. - There is no judicially enforceable requirement of subject matter notice with respect to a vote concerning the organization or reorganization of one house of the state legislature. *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982).

Private caucuses. - The statute has no application to private caucuses and there is thus no reason to exempt from the statute organizational votes which take place in such caucuses. *Malone v. Meekins*, 650 P.2d 351 (Alaska 1982).

Legislature's alleged violation of Open Meetings Act held nonjusticiable. - The Open Meetings Act, as it applies to the legislature, like the legislature's Uniform Rule 22, merely establishes a rule of procedure concerning how the legislature has decided to conduct its business; a failure to follow a rule of procedure is not the subject matter of judicial inquiry where there are no allegations that the legislature, acting pursuant to or in violation of one of its rules of procedure, has infringed on the rights of a third person not a member of a legislature or has ignored constitutional restraints or violated fundamental rights. *Aboud v. League of Women Voters*, 743 P.2d 333 (Alaska 1987).

Violation of Act by Governor's Reapportionment Board. - Superior court was correct in finding that Reapportionment Board violated the Open Meetings Act by failing to give reasonable notice of meetings and by meeting outside of the noticed meetings to do the business of reapportionment. *Hickel v. Southeast Conference*, 868 P.2d 919 (Alaska 1994).

Discussing characteristics of city manager applicants. - A city council was authorized by paragraph (c)(2) of this section to meet in executive session while discussing the personal characteristics of city manager applicants. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Public employee performance evaluation report. - Superior court order requiring city library advisory board to release to a newspaper a

performance evaluation report pertaining to a head librarian was affirmed, where the evaluation did not in any way deal with the personal, intimate, or otherwise private life of the librarian. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

Report of mayor's blue ribbon fiscal policy committee, - appointed to investigate city's economic condition, was not exempt from ordinary disclosure requirements, where the report was the product of a public process and was intended for public dissemination. *Municipality of Anchorage v. Anchorage Daily News*, 794 P.2d 584 (Alaska 1990).

A meeting of the board of governors of the Alaska Bar Association in Hawaii - in 1978 was not subject to the requirements of this section. *Horowitz v. Alaska Bar Ass'n*, 609 P.2d 39 (Alaska 1980).

Implied notice requirement. - Since the sole purpose of a notice requirement under subsection (c)(2) of this section is to afford the employee with an opportunity to request a public discussion, the University of Alaska was under the implied statutory obligation to inform the faculty member of the time and place of all meetings in which his application for tenure would be considered and to inform him that he had the right to request that the meetings be open to the public. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983).

Effect of university's failure to comply. - Since a violation of this section was found and the tenure committee recommendation was therefore void, the university had to begin anew its review of the faculty member's tenure application as if the flawed consideration had never taken place, the faculty member was entitled to all the benefits of ongoing employment up until the time of a new consideration, and the faculty member should be entitled to update his tenure file with recent academic accomplishments. *University of Alaska v. Geistauts*, 666 P.2d 424 (Alaska 1983) (decided prior to 1994 amendment).

Discussing termination of school principle. - A school board was authorized by paragraph (c)(2) to retain an elementary school principal. *Von Stauffenberg v. Committee for an Honest & Ethical Sch. Bd.*, 903 P.2d 1055 (Alaska 1995)

Implied notice requirement. Where a police chief had notice of a city council meeting at which a petition calling for his dismissal would be discussed, and he chose not to attend, the council's discussion of his employment in executive session proper, and he waived his right to request discussion in public by failing to appear. *Ramsey v. City of Sand Point*, 936 P.2d 126 (Alaska 1997)

Proper Remedy for Violation. - When a void decision is remanded by a court to the transgressing governmental body for reconsideration, approximation of the status quo at the time of the original decision is desirable. *Revelle v. Marston*, 898 P.2d 917 (Alaska 1995).

In assessing the redial benefits to be gained in light of the Open Meeting Act's goals when fashioning a remedy for an at-will employee who was terminated during a meeting that violated the act, the superior court should consider the goals of maximizing informed and principled decision-making in individual cases and deterring future violations as well as the goad of encouraging "public participation and input in the operation of government." The superior court should weight these benefits against the prejudice likely to accrue to the public if the employee is awarded back pay and benefits. Ordinarily, there must be a nexus between the violation of the act and the termination. However, the superior court could conclude that the public body's conduct was particularly egregious and that the goal of deterring such conduct in the future is paramount. In such a case, the absence of a nexus, the employee is entitled to at least his costs and full reasonable attorney's fees. *Revelle v. Marston*, 898 P.2d 917 (Alaska 1995).

Applied in *Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska*, 677 P.2d 886 (Alaska 1984); *Meiners v. Bering*

Strait Sch. Dist., 687 P.2d 287 (Alaska 1984); Abood v. Gorsuch, 703 P.2d 1158 (Alaska 1985).

Quoted in Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982); Anchorage Sch. Dist. v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989).

Cited in Anchorage Indep. Longshore Local 1 v. Municipality of Anchorage, 672 P.2d 891 (Alaska 1983).

Collateral Refs - 2 Am. Jur. 2d, Administrative Law, Sec. 281, 282.

73 C.J.S., Public Administrative Law and Procedure, Sec. 106, 107.

Validity, construction, and application of statutes making public proceedings open to the public. 38 ALR3d 1070.

Sec. 44.62.312. STATE POLICY REGARDING MEETINGS.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions. (Sec. 3 ch 98 SLA 1972; am Sec. 4 ch 54 SLA 1985; am Sec. 9 ch 69 SLA 1994)

Amendment Notes - The 1994 amendment, effective June 3, 1994, in subsection (b), made a section reference substitution and substituted "and to avoid exemptions from open meeting requirements and unnecessary executive sessions" for "and avoid unnecessary executive sessions."

Decisions - Public disclosure of applications. - Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982).

Quoted in Hammond v. North Slope Borough, 645 P.2d 750 (Alaska 1982); Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska, 677 P.2d 886 (Alaska 1984); Brookwood Area Homeowners Ass'n v. Municipality of Anchorage, 702 P.2d 1317 (Alaska 1985); Kila, Inc. v. State, Sup. Ct. No. Op. 4105 (File No. S-5237), P.2d (1994).

Cited in Anchorage Sch. Dist. v. Anchorage Daily News, 779 P.2d 1191 (Alaska 1989); Hickel v. Southeast Conference, 868 P.2d 919 (Alaska 1994).

Blank Page